



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

RECEIVED

JUN 29 1992

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20416

ORIGINAL
FILE

In the Matter of)
)
Amendment of Parts 1, 2, and)
21 of the Commission's Rules)
Governing Use of the Frequencies)
in the 2.1 and 2.5 GHz Bands)

PR Docket No. 92-80
RM 7909

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Notice of Proposed Rulemaking

Thomas P. Kerester, Esq.
Chief Counsel
Barry Pineles, Esq.
Office of Advocacy
United States Small Business
Administration
409 3rd Street, S.W.
Washington, DC 20416
(202) 205-6532

June 29, 1992

No. of Copies rec'd 045
List A B C D E

EXECUTIVE SUMMARY

RECEIVED

JUN 29 1992

The Federal Communications Commission (FCC ^{for the Commission}) initiated this proceeding to alleviate the administrative ^{Office of the Secretary} nightmare associated with approximately 20,000 unprocessed applications for Multipoint Distribution Systems (MDS). These systems are utilized by small businesses to provide the delivery of up to 33 channels of video programming in competition with conventional cable systems. Because they do not use closed transmission paths but rather, microwave transmission, they are called wireless cable systems. The Office of Advocacy agrees with the Commission that reduction of this application backlog will be a significant boon to the wireless cable operators. The Office of Advocacy also concurs with the FCC's finding that the proposals may have a significant economic impact on a substantial number of small entities. However, the Office of Advocacy believes that solutions set out by the Commission will exacerbate the problems faced by developers of wireless cable systems rather than alleviate them.

The FCC addresses three specific areas in the notice: 1) internal reorganization; 2) regulatory modifications; and 3) alterations to the processing of applications.

First, the Commission seeks advice on the internal reorganization of the MDS licensing. The Commission offers three options: 1) maintain the status quo; 2) shift all licensing to

the Private Radio Bureau; or 3) consolidate the proceedings in the Mass Media Bureau.

Of the options suggested by the Commission, the Office of Advocacy recommends that all licensing of MDS-type facilities be consolidated in the Mass Media Bureau. This is consistent with the Office of Advocacy's belief that wireless cable utilization of MDS service represents a mass media service.

Second, the FCC proposes to replace the current interference requirements with separation standards based on average assumptions about terrain and antennae height. Furthermore, applicants only will have to certify that they are in compliance with these standards.

The Office of Advocacy believes that this proposal will, as Commissioner Duggan suggests, do more harm than good. It will impose significant costs on small businesses that already have committed to system development under the current rules. The rules also do not provide developers with sufficient flexibility to build under unusual terrain and other conditions. Finally, by requiring certification, the FCC places the onus of enforcement of interference standards on competing applicants rather than on the Commission.

Third, the FCC attempts to solve the backlog of applications and their generation by application mills through a prohibition on settlements among competing applicants. As a corollary, the FCC also will prohibit any significant amendments to applications concerning the financial structure of an applicant. The Office of Advocacy believes that the Commission's efforts, while well-intentioned, are misplaced.

Proscriptions against full-market settlements are self-defeating. They represent the best method for eliminating the backlog of competing applications. The Office of Advocacy recommends that action be taken to enhance the ability of applicants to make full-market settlements. Similarly, the Office of Advocacy believes that solutions to trafficking of licenses by speculators are available without imposing undue restrictions on the ability of legitimate wireless cable operators to modify their business structure.

As for the evils of application mills, barring settlements will not curb their behavior. Rather, generic action either by the FCC or the Federal Trade Commission, is necessary.

Nothing the Commission does in this proceeding will alleviate the problems associated with MDS licensing unless the FCC is willing to allocate sufficient resources and personnel to removing the backlog of applications. The Office of Advocacy

cannot stress the importance of providing adequate resources to help "wireless cable" achieve its promise as a low-cost, solid competitor to conventional cable systems.

Before the
Federal Communications Commission
Washington, DC 20416

In the Matter of)	
)	
Amendments of Parts 1, 2, and)	PR Docket No. 92-80
21 of the Commission's Rules)	RM 7909
Governing Use of the Frequencies)	
in the 2.1 and 2.5 GHz Bands)	

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Notice of Proposed Rulemaking

I. Introduction

On May 8, 1992, the Federal Communications Commission (FCC or Commission) issued a notice of proposed rulemaking to examine various alternatives for reducing delay in the licensing of Multipoint Distribution Systems (MDS) which are mainly used for the transmission of video signals. In the Matter of Amendments of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, PR Docket No. 92-80, FCC 92-173 (NPRM). The FCC wishes to: 1) internally reorganize the licensing of MDS; 2) streamline rules and technical standards for operation of MDS; and 3) modify the processing procedures for MDS licensing. The Commission

recognized that these changes may have a significant economic impact on a substantial number of small entities. Given that determination, the FCC prepared, pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12 (RFA), an initial regulatory flexibility analysis.

The Office of Advocacy commends the Commission for recognizing the impact on small entities. The Office of Advocacy also supports the Commission efforts to reduce the regulatory burdens faced by MDS operators. Removal of these regulatory barriers will benefit MDS systems, the viewing public, and even conventional cable operators.¹ However, the Office of Advocacy

¹ The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521-59, prohibits the regulation of rates for basic cable service (any tier of service which includes the retransmission of local broadcast television signals) unless the cable operator does not face effective competition. After the enactment of this legislation, the FCC adopted a standard specifying that the availability of three over-the-air broadcast signals constitutes effective competition. This standard ensured that almost no cable system would have their rates regulated under the Act.

The Commission recently revised the standard for determining effective competition by increasing the number of broadcast signals from three to six. In the Matter of Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, MM Docket No. 90-4, Report and Order (July 25, 1991) (Effective Competition Proceeding). In this proceeding, the Commission also established a standard of effective competition based on the availability of a multichannel video delivery system. If a community is served by another multichannel video delivery system that is accessible to at least fifty percent of the customers of the cable system, then the cable operator faces effective competition and local authorities cannot regulate the cable system's rates. *Id.* at ¶¶ 37-43; 47 C.F.R. § 76.33(a)(2)(ii).

(continued...)

remains troubled by the Commission proposal. In particular, the Office of Advocacy is concerned that the Commission's proposals are designed to remove the backlog of MDS applications. The Office of Advocacy believes that the Commission's primary goal should be to enhance the commercial viability of such systems. The Office of Advocacy believes that a reallocation of resources coupled with minor regulatory changes will best accomplish the twin goals of licensing and commercial competitiveness in the video signal delivery field.

An MDS system consists of a fixed station which transmits high frequency signals omnidirectionally to fixed receivers with directional antennae. The signal is then converted from a microwave frequency to a lower frequency and passed through a decoder for use only by those intended to receive the MDS signal. *New York Commission on Cable Television v. FCC*, 669 F.2d 58, 60 (2d Cir. 1982). The technology was originally designed for the rapid transmission of data. However, technological advances in the development of fiber-optics and the digitalization of telephone signals have shifted that function to the local exchange carrier.

¹(...continued)

Removal of regulatory restrictions on MDS delivery of video signals and their concomitant growth will increase the probability that a cable system will face effective competition and not be subjected to onerous rate regulation delineated in the Effective Competition Proceeding. For cable operators that serve more rural or smaller urban markets, the probability is substantially greater that a community will have a multichannel delivery system before the community witnesses an influx of new television broadcast signals to meet the six station standard.

Meanwhile, entrepreneurs recognized the utility of this technology for the delivery of video signals to the home -- the so-called "wireless cable" (hereinafter referred to as wireless cable) systems.

Wireless cable systems utilize MDS technology to deliver approximately up to 33 channels of video programming to subscribers.² The primary distinction between wireless and wired cable systems is that wireless systems are not considered cable systems and thus are not subject to local franchising.³ In addition, their reliance on radio waves for transmission significantly reduces the cost of establishing these systems. The low cost and absence of a franchising requirement leaves wireless cable open to development by small businesses. In fact the vast majority of wireless cable operators are small

² A more typical system, such as the one currently operating in Rapid City, South Dakota, offers about 12 channels. Even if wireless cable systems are developed to their maximum carrying capacity, most systems would have difficulty filling all 33 channels. Many of the most popular non-broadcast television programs are produced by vertically-integrated cable system operators. These programs are not usually offered to competing video delivery systems or are offered at prices that make their purchase by a competitor unprofitable. Wireless cable operators are seeking legislation that will mandate program access at fair rates. The Office of Advocacy supports efforts to increase competition in the video delivery business by allowing wireless cable operators to have increased access to programming.

³ The Cable Communications Policy Act of 1984 only authorizes the issuance of franchises for those systems that have a closed transmission path. Since wireless cable uses a form of radio transmission, it has no closed transmission path and cannot be required to obtain a franchise under the Act.

businesses.⁴ As a result of these distinctions, the Commission believes that wireless cable systems can become an effective competitor to traditional cable systems.⁵

To increase the competitive capacity of wireless cable, the Commission recently modified the regulations governing MDS technology.⁶ The FCC authorized an increase in power for MDS transmitters, use of signal boosters, modifications to the requirements for leasing instructional television fixed service capacity by wireless cable operators, and established a prohibition against cable companies owning or leasing MDS

⁴ Wireless cable operators are classified along with other cable services and any business with less than 7.5 million dollars in revenue will be considered a small business pursuant to § 601 of the RFA (unless the Commission adopts a different standard for purposes of its analysis and the FCC has not done so). Data from the Wireless Cable Association and other wireless cable operators reveal that gross revenues for all but a few systems fall below the 7.5 million dollar mark.

⁵ Effective Competition Proceeding at ¶¶ 37-38; In the Matter of Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, Report and Order at ¶¶ 100-01, MM Docket No. 89-600 (July 30, 1990).

⁶ In the Matter of Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Gen. Docket No. 90-54, Report and Order, 5 FCC Rcd 6410 (1990) (Wireless Cable Order).

channel capacity in the jurisdictions in which they control the franchise. Despite these changes, the potential of wireless cable remains mired in a Serbonian Bog⁷ of applications that the Commission only now seems willing and ready to attack.⁸

The Commission selects MDS applicants based on a random drawing because utilization of the electromagnetic spectrum prohibits the award of more than one license for a specific frequency in a given area. As a result, thousands of applications, many submitted by application mills which advertise substantial gain to unwary investors, have flooded the Commission's offices. The FCC estimates that there are 20,000 unprocessed⁹ applications for MDS licenses. In a petition for rulemaking, the Wireless Cable Association notes that almost four thousand applications for mutually exclusive licenses have been filed in 80 markets; in some cases more than 100 applications have been filed for a particular market.¹⁰

⁷ The Serbonian Bog is an area in Egypt, which according to legend, swallowed up invading armies. See HERODOTUS, HISTORIES Book II.

⁸ Given the history of the Serbonian Bog, the Commission may fear that it too will be swallowed up by the number of applications for MDS licenses.

⁹ Even though the Commission awards these licenses on a random selection basis, the Commission must still review them in order to ensure that the applicants have complied with appropriate rules before entering them in the lottery for an MDS license.

¹⁰ Wireless Cable Association, Petition for Rulemaking at 8 and App. B (Dec. 10, 1991).

These speculative filings have delayed the development of wireless cable. First, numerous applications for the lottery in many markets did not fully comply with Commission regulations; this necessitated a reinitiation of the lottery process in those markets through the exclusion of unqualified applicants.¹¹ NPRM at ¶ 17 & n.32. Second, many lottery winners (also known as tentative selectees), who had no intention of building a system, have abandoned their licenses requiring the Commission to conduct a new lottery. Third, to the extent that these speculative filers can extract payments in the form of settlement agreements among competing applicants either prior to or after the lottery, the speculative filers reduce the amount of capital available to develop working wireless cable systems.

II. *The Proposed Rules*

The FCC's proposal recognizes that something must be done to alleviate the paperwork associated with and the backlog of MDS licensing. To achieve these objectives, the Commission proposes administrative and regulatory changes designed to accelerate the issuance of MDS licenses.

¹¹ Removal of unqualified applicants will change the odds of winning the lottery for qualified applicants. To be fair to the remaining applicants, the Commission weeded out applicants and reconducted the lottery.

A. FCC Reorganization of MDS Licensing

Licensing is now split between the Mass Media Bureau and the Common Carrier Bureau. The Mass Media Bureau awards, through a comparative hearing process, licenses for one type of MDS service -- Instructional Fixed Television Systems (ITFS).¹² The Common Carrier Bureau, after determining whether applications received for all MDS service other than ITFS are adequate, conducts a lottery.¹³ The Commission requests comments on whether all processing should remain as is, whether the Private Radio Bureau should assume some or all of the responsibility, or whether all licensing efforts should be consolidated within the Mass Media Bureau. *Id.* at ¶¶ 6-10. Reassignment of licensing responsibilities would not change the methods for awarding ITFS and MDS licenses. *Id.*

¹² ITFS is a fixed television station operated by an educational institution to transmit instructional, cultural, artistic, and other educational material to various receiving stations usually located in schools but could be constructed in other appropriate educational fora. Unused capacity on ITFS systems may be leased by a wireless cable operator from the educational institution licensed by the Commission. 47 C.F.R. § 74.913(e).

¹³ Location in the Common Carrier Bureau, while anomalous at first blush, represents a vestige of MDS's original purpose -- high-speed data transmission.

B. Regulatory Changes

FCC regulations prohibit MDS and ITFS operations from interfering with other nearby MDS and ITFS licensees. A critical element in processing MDS applications is the review of the interference analysis submitted by prospective licensees. 47 C.F.R. §§ 21.902, 74.903. The FCC staff then verifies the analysis to ensure that all applicants for a specific frequency and license will not interfere with adjacent MDS or ITFS operations. The Commission will not conduct a lottery for a specific frequency in a given market until it is confident that all lottery entrants meet the interference criteria. Given the backlog of 20,000 applications, the verification process represents a significant obstacle to the rapid award of MDS licenses.

The Commission recognizes this and proposes modifications to the regulations which, according to the FCC, will expedite the verification process. In turn, this will accelerate the conduct of lotteries and the award of licenses.

Specifically, the FCC proposes to replace the interference standards with requirements for station separation. Assuming that the height of the typical antenna is 180 meters, avoidance of signal overlap for MDS co-channels would occur if the stations are spaced 80 kilometers apart. The Commission also would

replace the current interference standard for adjacent MDS channels with a separation requirement of 48 kilometers. MDS operators would have to satisfy these separation standards from ITFS facilities. NPRM at ¶¶ 12, 15. MDS operators would have to certify that they meet these standards and the separation requirements would apply to all MDS applicants and current tentative selectees. *Id.* at ¶ 12 & n.25.

C. Processing Changes

Given the backlog of applications, the Commission admits that it must develop different procedures to address the extant applications. Further, the Commission wants to adopt new regulations which, in its estimate, will prevent a new Serbonian Bog from developing.

First, the Commission wants to develop a database of all the applications and licensees for MDS and ITFS facilities. The FCC adopted an order prohibiting the filing of applications for MDS licenses pending the compilation of this database.¹⁴ Only when

¹⁴ The temporary freeze has not abated the development of wireless cable systems. It simply has moved to another part of the spectrum. The Commission recently reallocated some idle portion of the 28 GHz band to video delivery. Wireless cable operators soon began filing applications and one has already been awarded for Brighton Beach in Brooklyn, New York. The Office of Advocacy applauds the Commission's efforts to promote wireless cable. However, the Office of Advocacy admonishes the FCC to learn from the mistakes of history and not repeat them in the 28 GHz band.

the database is complete will the Commission begin reaccepting applications for MDS licenses. *Id.* at ¶ 19. In addition to agency records, information received during a public comment period on the validity of all licenses, pending licenses, and applications for MDS and ITFS service will be utilized in compiling the database. *Id.* at ¶ 22.

Second, the FCC will prohibit the amendment of applications except to allow an applicant to bring the application into conformity with the new separation standards. This prohibition will accelerate the lottery process because the Commission staff will have fewer applications to review on a case-by-case basis to determine if the amendments alter the applicants' qualifications for the lottery. The Commission will open a 14 day window to make such alterations and, after closure of this period, no other amendments will be permitted other than those required by Part 1 of the FCC's regulations. *Id.* at ¶ 20. In particular, the FCC proposes to prohibit any amendment that "results in more than a pro forma change of ownership...." *Id.* at ¶ 17 n.33.

Third, in response to the efforts of application mills and their concomitant effect on the issuance of MDS licenses, the Commission proposes to bar settlement agreements. Debarment of settlement agreements also reduces the ability of joint applicants from increasing their odds in any lottery for a

license. *Id.* at ¶ 21 & n.38. The FCC expects that these procedures will reduce speculative filings made by application mills.

Fourth, upon completion of the aforementioned database, the Commission would grant all non-mutually exclusive license applications as well as those tentatively selected prior to the moratorium on the issuance of licenses and applications. All other license applications for MDS service would be awarded by lottery. The timing of the lottery for particular applications would be determined by the channels specified in the license and the filing windows adopted in prior Commission decisions. *Id.* at ¶¶ 23-25.

In the alternative, the Commission requests comments on whether the lotteries should be allocated according to metropolitan and rural statistical service areas.¹⁵ Tentative selectees would be granted licenses for their requested frequencies for the entire service area. Potential frequency conflicts could be alleviated through sharing, negotiation, or another lottery. All other applications would be apportioned to their appropriate service area and lotteries would be held in order of service area size with the first lottery for the largest service area. *Id.* at ¶¶ 26-28.

¹⁵ The FCC awarded cellular telephone licenses under this stratagem.

III. *Analysis of Proposal, Impacts on Small Businesses, and Alternatives*

The delays in processing applications hamper the development of wireless cable -- one of the least capital-intensive markets available for small business investment in the mass media.¹⁶ The Office of Advocacy supports the Commission's efforts to remove regulatory obstacles. However, the Office of Advocacy also agrees with the statement of Commissioner Duggan that the proposal may be "doing too much, too fast." NPRM, Statement of Commissioner Duggan at 2. In general, it appears that the FCC is attempting to award MDS licenses rather than ensure the viability of wireless cable systems. The Office of Advocacy suggests that the Commission focus its efforts on wireless cable and not simply seek a method for removing a serious problem in its administration of the electromagnetic spectrum.

A. Reassignment of Duties within the Commission

The Office of Advocacy concurs with the FCC's determination that modifications to the current processing structure must be

¹⁶ Enhancement of investment opportunities in the mass media is one of the major goals of the Commission. See In the Matter of Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, slip op. at ¶ 1 (April 1, 1992). The Commission also has explored, through a joint conference with the Howard University Small Business Development Center, the investment opportunities available to minorities in the field of telecommunications including wireless cable.

undertaken. The most important factor is sufficient allocation of resources and personnel to MDS application processing. Without sufficient resources, reassignment will only move the problem, not expedite its resolution.¹⁷

Assuming that the Commission decides to provide sufficient resources to resolve the processing dilemma, the Office of Advocacy supports consolidation in the Mass Media Bureau. MDS fundamentally represents a mass media service despite technological similarities to private radio transmission or its birth as a common carrier service. Determinations on the applicability of various Commission rules that currently regulate cable but which may be applied to wireless cable will no doubt be assigned to the Mass Media Bureau. If that bureau is going to regulate the non-technical aspects of wireless cable, then it should regulate all aspects of the service. Moreover, it would not require the transfer of ITFS service and its comparative hearing process to a bureau unfamiliar with the award of broadcast licenses.

¹⁷ Such reallocation of resources, even on a temporary basis, is absolutely critical at this juncture. Enactment of legislation to reregulate cable television service will, according to Chairman Sikes, place an inordinate strain on Commission resources. Since Congress is unlikely to provide the FCC with greater resources to comply with its potential responsibilities in the cable area, the Commission will have to reallocate resources from other areas including the processing of MDS and ITFS licenses. This will only exacerbate the problems faced by wireless cable operators. Thus, resolution of the backlog or at least a substantial reduction in size in the near future is vital to the health of the industry.

The Office of Advocacy also supports assignment of the database development to the Private Radio Bureau. Its efficient operation can accomodate undertaking the responsibility for development of a complete list of licensees and applicants without first determining whether the applications satisfy the FCC's rules. For future applications, the Private Radio Bureau could operate as an initial way-station for MDS applications to ensure that they have been properly submitted. Although the Office of Advocacy is less sanguine about the "balkanization" of MDS licensing, the Office would not object to such a change.¹⁸

B. Regulatory Changes

The most troubling aspect of the NPRM is the changes in the interference standard. It appears that these alterations were suggested, not to improve MDS service, but to expedite application processing. Determining compliance under the proposed standards will be much more straightforward than the current rules. This is especially true because the FCC staff will only have to check the certification submitted with the application. The Office of Advocacy agrees with Commissioner

¹⁸ To the extent that the efficiency in the Private Radio Bureau increases the speed with which applications are submitted to any other part of the Commission for evaluation, this will reduce delay. The benefits of celerity must be weighed against the potential confusion to small businesses of having to submit the application to a part of the Commission that will not make an ultimate determination on the validity of the application.

Duggan that the FCC has not considered the net aggregate effect of these changes on current or future wireless cable operators. *Id.* at 3. The Office of Advocacy encourages Commissioner Duggan to assure that the final order adopted by the FCC will not impose undue harm to the wireless cable industry.

An applicant for a MDS license spends thousands of dollars designing a system to meet the FCC technical standards. The proposed rules would force many applicants to expend precious capital in reconfiguring their systems and amending their applications. Tentative selectees will incur even greater costs because they have developed complete engineering plans, purchased equipment based on current regulations, and initiated any appropriate land-use proceedings based on current interference standards. Changing the rules in mid-stream will impose undue hardship on these tentative selectees.

The FCC can reduce the backlog of applications without modifying technical standards that, according to the Wireless Cable Association and other wireless operators, are more than satisfactory. The Commission simply must assign sufficient resources to perform the engineering analyses required under current rules. While the modifications may increase expeditious licensing of MDS, the proposals do not meet the objective of a viable wireless cable industry.

The Office of Advocacy also is troubled by the inflexibility of the regulatory changes. The proposed interference standards are based on certain line-of-sight assumptions and an average antenna height. However, terrain and other conditions may require substantially different antenna heights to reach potential subscribers. Taller antennae can lead to a wider area of potential interference and many systems may not qualify under the proposed criteria. Thus, the Commission, while accelerating the issuance of MDS licenses, is imposing regulatory hurdles to the development of commercially viable wireless cable systems.

In performing a final regulatory flexibility analysis, the FCC should examine the impact that the interference standards have on small business and their ability to engineer practicable wireless cable systems. The Office of Advocacy recommends that the Commission allocate sufficient engineering personnel to analyze interference under current standards. This will ensure a speedy resolution to the backlog of MDS applications without imposing undue design constraints on wireless cable developers.

The Office of Advocacy also remains troubled by the Commission's proposal to replace analysis of interference with an applicant's certification. To be sure, a certification statement by the applicant will alleviate much of the engineering analysis that the FCC staff must perform.

However, two potential drawbacks exist to the certification proposal. First, the certifications filed by the applicants may not meet appropriate technical standards. Thus, the certifications may not provide the information needed by the Commission to determine the acceptability of the application. Second, the proposal will shift the analytical requirements to MDS and ITFS operators to ensure that the an applicant's system does not pose an interference problem. This will further stretch the limited resources of small businesses as they scan applications to determine whether a competing applicant will interfere with their operations. The Commission must not rely on small businesses to perform the FCC's regulatory oversight. The Office of Advocacy believes that certification process is fraught with potentially significant costs that outweigh any benefits from a reduction in the Commission workload.

Any interference that does occur under the proposed standards could result in an FCC order, without a hearing, to immediately cease operations.¹⁹ Investors will be very reluctant to finance wireless cable operations unless they have some assurances that their investment is protected through the generation of cashflow. Immediate cessation of operations and

¹⁹ For example, two adjacent systems might be trying to serve customers on their peripheries which could overlap. A system that can, through an interference complaint, force cessation of operations could pick up those customers.

the extinction of cashflow upon a complaint of interference represent a substantial barrier to acquiring capital.

Rather than looking at means to reduce the financing opportunities in wireless cable, the Commission should examine methods for increasing investment, as it has with the broadcast industry. The Commission should not adopt an immediate cessation rule because determination of success or failure will be placed in the regulatory arena and not the marketplace; investors are far more comfortable with exigencies of the marketplace than the vagaries of the regulation. Investors are more likely to risk their capital in the freely operating market than one in which regulatory intervention can play a dominant role.

C. Processing Changes

The Office of Advocacy objects to the Commission's proposed restrictions on amendments to MDS applications. The proposed rules debar amendments if the applicant wants to exit the wireless cable business,²⁰ a parent company is sold, bankruptcy is declared, or most significantly, new equity financing is obtained.

²⁰ The Office of Advocacy's inclusion of exiting the business is not meant to include actions that the Commission commonly consider the trafficking in licenses.

The Office of Advocacy understands that the proscriptions will hasten the review of applications and reduce trafficking associated with speculators who file applications and only intend to sell their lottery victory to a wireless cable operator. However, these benefits should be weighed against the potential costs on current business owners.

The application of a subsidiary company should not be dismissed simply because of the uncontrollable or unforeseen actions of its parent. The subsidiary, either as a free-standing entity or the subsidiary of another company, still may represent a viable wireless cable developer. Simply dismissing the application punishes a party for no wrongdoing on its part and may decrease the number of effective competitors to conventional cable operators in a particular area.

Nor should an applicant be penalized in an attempt to obtain greater equity financing. The Office of Advocacy sees no benefit in imposing obstacles to financing systems that will reduce the amount of debt, lower operating costs, and improve the competitive position of wireless cable operators in their struggle against conventional cable systems. The Office of Advocacy believes that these benefits outweigh any potential for increased trafficking of MDS licenses associated with legitimate changes in an applicant's business structure.